

REMARKS

The Decision on appeal mailed February 1, 2010, and the Office communications mailed March 10 and March 15, 2011, have been carefully studied. Claims 46-53 currently appear in this application. These claims define novel and unobvious subject matter under Sections 102 and 103 of 35 U.S.C., and therefore should be allowed. Applicant respectfully requests favorable reconsideration and formal allowance of the claims.

The claims at bar are based upon claim 33, against which the Board of Patent Appeals and Interferences found none of the cited art applied. The only rejection maintained against claim 33 was a rejection under 35 U.S.C. 112, first paragraph.

Specifically, in the Board decision mailed February 1, 2010, the Board stated, beginning at page 11, penultimate paragraph:

Appellant has the better position. Claim 33 recites “a method for determining *if* an animal has been exposed to a specific hemolysin-producing fungus,” (emphasis added). That determination is made by detecting the presence of the hemolysin in a sample from the animal.

Similar to the discussion above regarding claim 23, we do not agree with the Examiner that it is reasonable to interpret claim 33 as encompassing processes, like Sakaguchi’s, in which the detecting step is performed on a subject that has been deliberately infected with the fungus. If the claim were interpreted as encompassing the process where the subject’s exposure status was already known, there would be no reason to perform the claimed steps.

Thus, because the Examiner's anticipation rejection is not based on a reasonable interpretation of claim 33, we reverse it.

New claims 46-53 are submitted to cure the deficiencies in claim 33, which the Board found did not satisfy the written description requirement. New claim 46 is drawn to a process for detecting if an animal has been exposed to a hemolysin-producing fungus of interest by contacting the sample with labeled antibodies which bind to the hemolysin produced by the fungus of interest or to active fragments of the hemolysin and detecting any complex formed between the labeled antibodies and the hemolysin or active fragments thereof, wherein the presence of hemolysin in the sample indicates that the animal has been exposed to the hemolysin-producing fungus.

The specification at paragraph [0021] describes broadly the concept of using fungal hemolysins to produce antibodies that can be used to demonstrate exposure to fungi. More specifically, the specification describes methods of obtaining antibodies specific to the fungal hemolysin protein at paragraph [0030]. Paragraphs [0031] to [0033] describe how one can assay for the presence of a hemolysin-producing fungus using antibodies to the hemolysin.

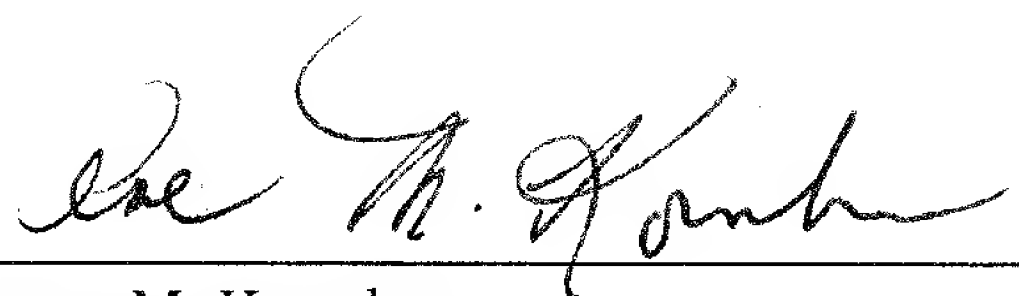
It is respectfully submitted that new claims 46-53 are fully supported by the instant disclosure, and therefore should be allowed.

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Reply to Office Communications of March 10, 2011
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In view of the above, it is respectfully submitted that the claims are now in condition for allowance, and favorable action thereon is earnestly solicited.

Respectfully submitted,

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